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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/647,980

Applicant(s)

PITSCH, KARL-HEINZ

Examiner

PAUL DANNEMAN

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 52-102 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 52-102 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/22)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Response to Amendment

1. This Office Action is in response to Applicant's response filed on 29 October 2009 to the First Office Action on the Merits.
2. Claims 1-51 have been canceled.
3. Claims 52-102 are newly added.
4. Claims 52-102 are pending and have been examined in this Office Action.

Response to Arguments

5. The rejection of Claims 1 and 3-7 under 35 U.S.C. § 112, first paragraph is respectively withdrawn as Applicant has canceled the claims.
6. Applicant's arguments with respect to claims 1, 3-8, 15-20, 22-27, 29-34, 36-39, 41-46 and 48-51 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

7. **Claims 52-102** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolls, US 6,601,040 B1 and further in view of Klein et al., US 5,163,010 hereinafter known as Klein and further in view of Bartholomew et al, US 6,883,561 B2 hereinafter known as Bartholomew.

Claims 52, 60, 76 and 85-87:

With regard to the limitations:

- *Authenticating an operator to determine if said operator is a professional hair or beauty care provider authorized to access one of said plurality of vending devices;*

Kolls does not specifically disclose determining if the operator/user is a professional hair or beauty care provider, however Kolls in at least Fig. 1 and Column 5, lines 36-55 discloses a vending machine which can deny usage, access, service, or products from the vending machine.

The system accepts user input, authenticates the user input and determines if the user is authorized to use the vending machine. If the user is authorized the vending machine effectuates the delivery, monitoring, and dispensing of the product, and/or service. Therefore it would have been obvious, at the time of the invention, to one of ordinary skill to modify Kolls authorization/authentication process to determine if the user is a professional hair or beauty care provider with the motivation to insure that only authorized users can access the product/service offered by the vending device.

- ***Permitting said operator to purchase one or more hair care or cosmetic products from an accessed vending device;***
- ***Generating transaction data comprising identification information of said accessed vending device and said one or more hair care or cosmetic products purchased;***

Kolls in at least Fig. 1 and Column 5, lines 36-55 discloses delivering, monitoring and dispensing of the product and/or service to an authorized user. Kolls further discloses that the post vending transaction data being processed for billing and account maintenance and lastly, settling up through the transfer of funds, i.e. payment. Kolls does not specifically disclose that the transaction data includes the vending device identification per se, however in at least Fig. 10 item 810 discloses that a universal server broadcasts a service message to an individual system 500, a subset of systems, or all systems. Kolls in at least Column 30, lines 29-37 discloses that the pre-vend transaction data can include merchant identification and system 500 ID codes, remote location codes and terminal codes.

Kolls does not specifically disclose the sale of hair care or cosmetic products, however Klein in at Column 2, lines 5-29 discloses an apparatus for automatically formulating and dispensing a custom mixed cosmetic product at a point of sale in response to criteria entered by a customer. The device is adapted to formulate and dispense cosmetic products such as permanent waving solutions, shampoos, dyes, skin lotions, etc. Therefore, it would have been obvious, at the time of the invention to combine the well known product and/or service selling and dispensing features

of Kolls with the equally well known hair product formulation features of Klein with the motivation to better serve a user/customer.

- ***Receiving said transaction data from each of said plurality of vending devices by a central computer over said communication network; and***

Kolls in at least Fig.11, Column 30, lines 25-67 and Column 31, lines 1-10 further discloses the routing of transaction data for posting and settlement between a vending machine 630 interconnected with a system 500, a universal server or a POS system over a communication network.

- ***Remotely managing inventory of each of said plurality of vending devices based on said transaction data, and scheduling delivery to each of said plurality of vending devices inventory.***

Kolls in at least the Abstract discloses that complete control of a vending machine's functionality including usage, control, diagnostics, inventory, and marketing data capture can be effectuated locally or by remote connection to the network where the network includes Internet type connections, telecommunication networks, satellite and other wire and wireless transmission. Kolls further discloses that the vending equipment can be networked to each other and accessible by a PC, server, point-of-sale (POS) system, property or management information system and networked to a second network. Therefore, it would have been obvious, at the time of the invention, to one of ordinary skill to modify Kolls "complete control of a vending machine's inventory" to include scheduling the delivery of inventory required at the vending machine(s) with the motivation to insure that the vending machine(s) have sufficient inventory of the product or service being provided to customers.

Claims 53-59, 61-65, 68-72, 75 and 77-81, 83, 88, 90, 94-98 and 101:

With regard to the following limitations:

- ***Dispensing one or more hair care or cosmetic product by said accessed vending device.***

Kolls does not specifically disclose the sale of hair care or cosmetic products, however Klein in at Column 2, lines 5-29 discloses an apparatus for automatically formulating and dispensing a custom mixed cosmetic product at a point of sale in response to criteria entered by a customer. The device is adapted to formulate and dispense cosmetic products such as permanent waving solutions, shampoos, dyes, skin lotions, etc. Therefore, it would have been obvious, at the time of the invention to combine the well known product and/or service selling and dispensing features of Kolls with the equally well known hair product formulation features of Klein with the motivation to better serve a user/customer.

- ***Receiving payment information from said professional hair or beauty care provider.***

Kolls in at least Column 1, lines 34-54 discloses a networked vending machine having a payment system for goods and services and the delivery of goods and services. Kolls does not specifically disclose determining if the operator/user is a professional hair or beauty care provider, however Kolls in at least Fig. 1 and Column 5, lines 36-55 discloses a vending machine which can deny usage, access, service, or products from the vending machine. The system accepts user input, authenticates the user input and determines if the user is authorized to use the vending machine. If the user is authorized the vending machine effectuates the delivery, monitoring, and dispensing of the product, and/or service. Therefore it would have been obvious, at the time of the invention, to one of ordinary skill to modify Kolls authorization/authentication process to determine if the user is a professional hair or beauty care provider with the motivation to insure that only authorized users can access the product/service offered by the vending device.

- ***Verifying said payment information is sufficient to cover the cost of said one or more hair care or cosmetic products by said accessed vending device.***
- ***Dispensing said one or more hair care or cosmetic products from said accessed vending device if it is determined that said payment information is sufficient to cover the cost of said one or more hair care or cosmetic products.***

Kolls in at least Fig.1, Fig.2 and Column 6, lines 25-35 discloses a transaction control device 108 which can accept coins, currency, magnetic cards, phone cards, smart cards, credit cards, debit cards or other value storing medium and is capable of communicating a set of qualifying/disqualifying data or enabling/disabling data to a second control device. Transaction control devices indicate to external peripheral devices that a set of satisfying criteria has been met and allowance of system use is granted (an enabling signal).

Kolls does not specifically disclose the sale or dispensing of hair care or cosmetic products, however Klein in at Column 2, lines 5-29 discloses an apparatus for automatically formulating and dispensing a custom mixed cosmetic product at a point of sale in response to criteria entered by a customer. The device is adapted to formulate and dispense cosmetic products such as permanent waving solutions, shampoos, dyes, skin lotions, etc. Therefore, it would have been obvious, at the time of the invention to combine the well known product and/or service selling and dispensing features of Kolls with the equally well known hair product formulation features of Klein with the motivation to better serve a user/customer.

- ***Displaying an insufficient fund message on said accessed vending device if it is determined that said payment information is insufficient to cover the cost of said one or more hair care or cosmetic products.***
- ***Inhibiting said one or more hair care or cosmetic products from being dispensed from said accessed vending device if it is determined that said payment information is insufficient.***

Kolls in at least Fig.9A and Column 23, lines 13-54 discloses the processing the transaction to determine the validity of the transaction to continue "approved" use or "denied" use of the vending equipment using any suitable method of transaction verification including the use of local or remote databases, credit bureaus, corporate accounts, in-store account, or very important person (VIP) memberships, etc.

Kolls does not disclose an "insufficient fund message", however Kolls in at least Column 23, lines 55-56 discloses that the user that the transaction-processing attempt was "declined." Therefore,

it would have been obvious, at the time of the invention, to one of ordinary skill to modify Kolls' "declined" message to display a message indicating "insufficient funds" with the motivation to inform the user why access to a vending machine was denied.

Kolls in at least Fig. 1 and Column 5, lines 36-55 discloses a vending machine which can deny usage, access, service, or products from the vending machine.

- ***Printing a receipt for said one or more hair care or cosmetic products purchased by said profession hair or beauty care provider.***

Kolls in at least Column 24, lines 66-67 and Column 25, lines 1-2 discloses printing a transaction receipt.

Claim 66:

With regard to the limitations:

- ***Receiving a selection of a shade from a plurality of shades associated with a hair care or cosmetic product from an operator by an accessed vending device;***
- ***Determining by said accessed vending device a pre-specified amount of each base stock color required to prepare said shade selected by said operator;***
- ***Delivering said tray containing said shade of said prepared hair care or cosmetic product at a point-of-use to said operator;***

Kolls does not specifically disclose the limitations above per se, however Klein in at least Column 2, lines 5-29 discloses an invention of an apparatus for automatically formulating and dispensing a custom mixed cosmetic product at the point of sale in response to input criteria based on the customer's specific needs.

- ***Generating transaction data by said accessed vending device comprised of information of said accessed vending device and shade of said prepared hair care or cosmetic product purchased by said operator from said accessed vending device;***

- ***Receiving said transaction data from each of said plurality of vending devices by a central computer over said communications network; and***

Kolls in at least Fig. 1 and Column 5, lines 36-55 discloses delivering, monitoring and dispensing of the product and/or service to an authorized user. Further disclosed is the post vending transaction data being processed for billing and account maintenance and lastly settling up through the transfer of funds, i.e. payment. Kolls does not specifically disclose that the transaction data includes the vending device identification per se, however in at least Fig.10 item 810 discloses that a universal server broadcasts a service message to an individual system 500, a subset of systems, or all systems. Kolls in at least Column 30, lines 29-37 discloses that the pre-vend transaction data can include merchant identification and system 500 ID codes, remote location codes and terminal codes.

Kolls does not specifically disclose the sale of hair care or cosmetic products, however Klein in at Column 2, lines 5-29 discloses an apparatus for automatically formulating and dispensing a custom mixed cosmetic product at a point of sale in response to criteria entered by a customer. The device is adapted to formulate and dispense cosmetic products such as permanent waving solutions, shampoos, dyes, skin lotions, etc. Therefore, it would have been obvious, at the time of the invention to combine the well known product and/or service selling and dispensing features of Kolls with the equally well known hair product formulation features of Klein with the motivation to better serve a user/customer.

- ***Remotely managing inventory of each of said plurality of vending devices by said central computer which maintains and updates inventory data when a purchase of said shade is made.***

Kolls in at least the Abstract discloses that complete control of a vending machine's functionality including usage, control, diagnostics, inventory, and marketing data capture can be effectuated locally or by remote connection to the network where the network includes Internet type connections, telecommunication networks, satellite and other wire and wireless transmission. Kolls further discloses that the vending equipment can be networked to each other and

accessible by a PC, server, point-of-sale (POS) system, property or management information system and networked to a second network.

Claim 67:

With regard to the limitation:

- ***Wherein said processor authenticates said operator to determine if said operator is a professional user authorized to access said each vending device.***

Kolls does not specifically disclose determining if the operator/user is a professional hair or beauty care provider, however Kolls in at least Fig. 1 and Column 5, lines 36-55 discloses a vending machine which can deny usage, access, service, or products from the vending machine. The system accepts user input, authenticates the user input and determines if the user is authorized to use the vending machine. If the user is authorized the vending machine effectuates the delivery, monitoring, and dispensing of the product, and/or service. Therefore it would have been obvious, at the time of the invention, to one of ordinary skill to modify Kolls authorization/authentication process to determine if the user is a professional hair or beauty care provider with the motivation to insure that only authorized users can access the product/service offered by the vending device.

Claims 73-74, 99 and 100:

With regard to the limitation:

- ***Wherein receiving a selection of said shade comprises the step of receiving a product sku number from said professional user by said accessed vending device.***
- ***Wherein receiving a selection of said shade comprises the step of displaying a set of said plurality of shades at a time on a display device of said accessed vending device to said professional user.***

Kolls does not specifically disclose the limitation above, however Kolls in at least the Abstract discloses that complete control of a vending machine's functionality including usage, control,

diagnostics, inventory, and marketing data capture can be effectuated locally or by remote connection to the network where the network includes Internet type connections, telecommunication networks, satellite and other wire and wireless transmission. Klein in at least Column 2, lines 5-29 discloses the computer outputting a series of instruction sets in response to the specific input criteria to a dispensing means. The dispensing means automatically and sequentially dispenses proper amounts of the plurality of cosmetically functional mixtures into a formulation receptacle in response to the instruction sets to form a custom mixed formulation of a cosmetic product at the point-of-sale.

The combination of Kolls/Klein does not specifically disclose selecting a "shade"; however Bartholomew in at least Column 17, lines 1-23 discloses a user choosing a particular cosmetic color selection from a plurality of predetermined formulations presented via a palette on an output display having a recipe that corresponds with a particular color stored in a database. Therefore, it would have been obvious, at the time of the invention, to one of ordinary skill to combine Kolls' ability to completely control a vending machine's inventory with Klein's ability to produce a custom mixed formulation of a cosmetic product from an instruction set with Bartholomew's color palette and further modify the combination of Kolls/Klein/Bartholomew with a product sku number representative of the shade of the custom mixed formulation with the motivation to provide an easy way to track and maintain the raw product inventory based on sales transactions.

- ***Wherein said user interface comprises a keypad for selecting a shade.***

Kolls in at least Column 6, lines 1-7 discloses a vending machine having a keyboard.

Claims 82 and 89:

With regard to the limitation:

- ***Wherein said user interface comprises a keypad.***

Kolls in at least Column 6, lines 1-7 discloses a vending machine having a keyboard.

Claims 84, 91 and 102:

With regard to the limitation:

- ***Wherein said one or more hair or cosmetic products are hair dye products.***

Kolls does not specifically disclose the sale of hair care or cosmetic products, however Klein in at Column 2, lines 5-29 discloses an apparatus for automatically formulating and dispensing a custom mixed cosmetic product at a point of sale in response to criteria entered by a customer. The device is adapted to formulate and dispense cosmetic products such as permanent waving solutions, shampoos, dyes, skin lotions, etc. Therefore, it would have been obvious, at the time of the invention to combine the well known product and/or service selling and dispensing features of Kolls with the equally well known hair product formulation features of Klein with the motivation to better serve a user/customer.

Claim 92 and 93:

With regard to the limitations:

- ***A central computer in communication with said plurality of vending devices, and***

Kolls in at least the Abstract discloses that complete control of a vending machine's functionality including usage, control, diagnostics, inventory, and marketing data capture can be effectuated locally or by remote connection to the network where the network includes Internet type connections, telecommunication networks, satellite and other wire and wireless transmission. Kolls further discloses that the vending equipment can be networked to each other and accessible by a PC, server, point-of-sale (POS) system, property or management information system and networked to a second network.

- ***Each vending device having a plurality of reservoirs containing different base stock color of hair care or cosmetic product to dispense into a tray based on the shade selected,***

Kolls does not disclose the limitation above, however Klein in at least Fig.6b and Column 2, lines 5-30, discloses an apparatus for automatically formulating and dispensing a custom mixed

cosmetic product at the point-of-sale which includes a plurality of containers whose contents are cosmetically functional mixtures which when sequentially dispensed in proper amounts into a formulation receptacle create a custom mixed formulation of a cosmetic product

- *Each vending device having a user interface, payment device and processor for preparing the shade selected, generating transaction data when payment is received, transaction data including vending device identification,*
- *Each vending device having a dispensing device for delivery of said tray containing prepared hair care or cosmetic product at the point-of-use,*
- *Each vending device having a transmitting device for transmitting said transaction data to said central computer; and*

Kolls in at least Fig. 1 and Column 5, lines 36-55 discloses delivering, monitoring and dispensing of the product and/or service to an authorized user. Kolls further discloses that the post vending transaction data being processed for billing and account maintenance and lastly, settling up through the transfer of funds, i.e. payment. Kolls does not specifically disclose that the transaction data includes the vending device identification per se, however in at least Fig.10 item 810 discloses that a universal server broadcasts a service message to an individual system 500, a subset of systems, or all systems. Kolls in at least Column 30, lines 29-37 discloses that the pre-vend transaction data can include merchant identification and system 500 ID codes, remote location codes and terminal codes.

Kolls does not specifically disclose the sale of hair care or cosmetic products, however Klein in at Column 2, lines 5-29 discloses an apparatus for automatically formulating and dispensing a custom mixed cosmetic product at a point of sale in response to criteria entered by a customer. The device is adapted to formulate and dispense cosmetic products such as permanent waving solutions, shampoos, dyes, skin lotions, etc. Therefore, it would have been obvious, at the time of the invention to combine the well known product and/or service selling and dispensing features of Kolls with the equally well known hair product formulation features of Klein with the motivation to better serve a user/customer.

- ***Wherein said central remotely manages inventory for each of said plurality of vending devices by updating inventory data maintained at each vending devices based on said transaction data received for purchases of said shade made on each of said plurality of vending devices, and scheduling delivery of inventory to each of said plurality of vending devices.***

Kolls in at least the Abstract discloses that complete control of a vending machine's functionality including usage, control, diagnostics, inventory, and marketing data capture can be effectuated locally or by remote connection to the network where the network includes Internet type connections, telecommunication networks, satellite and other wire and wireless transmission. Kolls further discloses that the vending equipment can be networked to each other and accessible by a PC, server, point-of-sale (POS) system, property or management information system and networked to a second network. Therefore, it would have been obvious, at the time of the invention, to one of ordinary skill to modify Kolls "complete control of a vending machine's inventory" to include scheduling the delivery of inventory required at the vending machine(s) with the motivation to insure that the vending machine(s) have sufficient inventory of the product or service being provided to customers.

- ***Wherein said processor authenticates said operator to determine if said operator is a professional user authorized to access said each vending device.***

Kolls does not specifically disclose determining if the operator/user is a professional hair or beauty care provider, however Kolls in at least Fig. 1 and Column 5, lines 36-55 discloses a vending machine which can deny usage, access, service, or products from the vending machine. The system accepts user input, authenticates the user input and determines if the user is authorized to use the vending machine. If the user is authorized the vending machine effectuates the delivery, monitoring, and dispensing of the product, and/or service. Therefore it would have been obvious, at the time of the invention, to one of ordinary skill to modify Kolls authorization/authentication process to determine if the user is a professional hair or beauty care

provider with the motivation to insure that only authorized users can access the product/service offered by the vending device.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL DANNEMAN whose telephone number is (571)270-1863. The examiner can normally be reached on Mon.-Thurs. 6AM-5PM Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Florian Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Paul Danneman/

Examiner, Art Unit 3627

17 December 2009

/F. Ryan Zeender/

Supervisory Patent Examiner, Art Unit 3627